IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4163 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATISHKUMAR SON OF NYALCHAND BHURABHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4163 of 2001

MR SV RAJU for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), the Commissioner of Police, Ahmedabad City, vide order dated April 22, 2001,

detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the detenu as a dangerous person within the meaning of Section 2 (c) of the Act as FIR No. 58/2001 for commission of the offences under sections 304, 420, 120B (1) of IPC and under sections 3 (2) (c) (d), 7 (1) (i) (ii) of the Gujarat Ownership Flat Act, 1973 punishable under section 42 of the Gujarat Ownership Flat Act, 1973 is registered with Satellite Police Station agaisnt the detenu and another FIR No. 66/01 for the offences under Section 147, 148, 149, 323, 506 (2) of the IPC is also registered with Navrangpura Police Station against the detenu, which are pending investigation and pending trial respectively. Therefore, according to the detaining authority, the activities of the detenu are prejudicial to the maintenance of public order and with a view to curb the said activities, the detaining authority has detained the detenu.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of mandamus or any other appropriate writ order or direction by quashing and setting aside the impugned order of detention dated April 22, 2001 and set the detenu at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Raju, learned advocate for the petitioner has restricted his arguments to the fact that subjective satisfaction recorded by the detaining authority cannot be considered as genuine as there was no sufficient material with the detaining authority to detain a person in custody. The detaining authority has observed in para 3 at page 4 (page 35 of the compilation) that the detenu would indulge in same activity after being released on bail and, therefore, it has become necessary to detain him. Mr. Raju contended that on this sole ground the order of detention deserves to be quashed and set aside. He, therefore, urged to allow the petition by setting the detenu at liberty forthwith.

5. Mr. K.T. Dave, learned AGP appearing on behalf of the respondents contested the petition by making oral submissions as well as by filing reply affidavit which is sworn by P.C. Pande, Commissioner of Police, Ahmedabad City. However, he does not dispute the contention raised by Mr. Raju with regard to the observation made by the

detaining authority in para 3 at page 35 of the compilation. He, therefore, urged to pass appropriate order in light of the principles enunciated by the Supreme Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition, documents annexed thereto and the impugned order of detention as well as judgments cited at the bar.

7. Similar question arose before the Supreme Court in the case of Abdul Sathar Ibrahim Manik v. Union of India AIR 1991 SC 2261, wherein the Supreme Court has held that there must be enough material necessitating the detention of a person in custody. If there is possibility of his being released on bail and on being so released he is likely to indulge in prejudicial activities then there must be compelling reason to pass detention order.

8. In the case of Binod Singh v. District Magistrate, Dhanbad, AIR 1986 SC 2090, the Supreme Court has held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised.

9. Again, in the case of Amritlal v. Union Government, AIR SCW 2000 4203 similar view is expressed by the Supreme Court. In the said case, it has been observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail".

10. Applying the aforesaid principles laid down by the Supreme Court to the facts of the present case, in the instant case also the detaining authority has considered only the aspect of the detenu being released on bail and thereafter his indulging in similar activities but on what basis he has come to the conclusion that the detenu would continue to indulge in similar activities is not mentioned in the order of detention and, therefore, the impugned order of detention

deserves to be quashed and set aside and the petition deserves to be allowed.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)